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ABSTRACT

Districts should develop a procedure for the handling of their relations with law enforcement officials that balances students' and parents' rights with the responsibilities of law enforcement officials. This balance can be maintained only through a good working relationship between the school and law enforcement personnel in which each recognizes the other's responsibilities and the rights of students and their parents. This model is designed to aid school districts in the development of policies and rules. It should be used as a focal point of discussion rather than merely adopted as it stands. Such a policy should be reviewed by staff, students, community members, law enforcement officials, and legal counsel. The model policy is a short statement expressing general school district philosophy concerning investigations and the relationship between the school and law enforcement officials. The rules apply the policy to specific situations and cover such areas as administrative investigations, law enforcement investigations, questioning of students, violations of criminal law, taking a student into custody, and the maintenance of regular communication between school officials and law enforcement officials. (Author/JM)

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MODEL POLICY AND RULES FOR MAINTAINING A COOPERATIVE EFFORT BETWEEN SCHOOL ADMINISTRATORS AND LAW ENFORCEMENT OFFICIALS

IMPORTANT: THIS IS A MODEL ONLY

This model contains numerous ethical, educational and legal judgments. Do not accept any portion of this model as local policy or rules until after full and sufficient consideration. It is always wise to have proposed local policies and regulations reviewed by legal counsel.

Des Moines, Iowa
May, 1977

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Model Policy and Rules for Maintaining a
Cooperative Effort Between School Administrators
and Law Enforcement Officials

Introduction

The following letter was received recently by the Iowa Department of Public Instruction. The names of the community and persons involved have been deleted.

"Dear Sir:

"I am writing to request an investigation into what I consider a violation of individual rights and the use of improper methods by the _____ Police Department and the _____School District. The incident is as follows:

"On Saturday, February 28, a 4 year old boy and an 8 year old girl were attacked, beaten and the girl was threatened as attempted to be molested by a boy riding a black bicycle. The parents of the children obtained a 1975 _____ Junior High School yearbook, from which the children picked our 13 year old son out as the attacker. At approximately 3 p.m. Monday, March 1, the parents called the Police Department and gave them our son's name. Instead of contacting us, his parents, and our son that afternoon, to see where he was at the particular time, they waited until Tuesday, March 2, a.m. and went to _____ School, had our son taken from class, did not tell him what he was being accused of, and took him to these people's residence to see if the children could identify him as the one who had beaten them. They, the children, said he was not the one. All this took place without his parents being notified by either _____ School or the police. At 10:30 a.m., March 2, we received a phone call from the mother of the children apologizing for any embarrassment caused us or our son. After getting the details from her, we went to _____ School to see why we were not notified before they took our son from school, a question they could not answer. We then went to the police station to see why we weren't contacted. In a meeting with the Police Commissioner _____, Police Chief _____, Juvenile Officers _____ and _____, we were told we would have been called only if our son was arrested. Officer _____ was very rude, arrogant, offensive and dominated the conversation. When I would try to talk to Officer _____, Officer _____ would immediately say he was the senior officer and we would talk to him. We asked him why we weren't contacted directly instead of going to the school and causing embarrassment to us and our son. Officer _____ said he was out to solve the case any way he could and that he could care less about our feelings. He then said he wasn't going to argue about it and for us to either make charges against him and he would call his attorney or else for us to leave.

"I am concerned that as the attacker apparently resembles our son a 4 year old and 8 year old child could easily have said he was the one who done it and he would have been arrested without our knowing he had even been taken from school. I might add, we live several miles out in the country and a little common sense on the part of the police, they would realize it highly improbable our son would be riding a bicycle in town anyway.

"Our complaint is this - Why is it innocent tax paying citizens have to contend with such hateful, arrogant, rude public officials as we were exposed to while seeking an answer to why we the parents of a 13 year old minor were not contacted before he was taken from school premises and exposed to such an experience.

"Any answer to this situation would be greatly appreciated.

Thank you."

Upon subsequent inquiry, the Department discovered that the school district had an unwritten policy against releasing students to police or even allowing police to question students without notifying the student's parents. The superintendent indicated that the school principal had been subjected to considerable pressure by the police officers. He further indicated that the district would attempt to develop a closer relationship with the police which would hopefully prevent a future reoccurrence of the situation.

The Department of Public Instruction feels that school districts should give considerable thought to the handling of similar situations before they happen. Districts should develop a procedure for the handling of law enforcement-school relations which properly balances the student and parents' rights with the responsibilities of law enforcement officials. This can be effectively accomplished only through a good working relationship between the school and law enforcement personnel in which each recognizes the other's responsibilities and the rights of students and their parents.

In an effort to aid school districts and other interested persons in the development of policies and rules, a committee of staff members of the Iowa Department of Public Instruction has drafted a model which may be used as a focal point of discussion. Remember, this is only a model and should not be accepted as school policy in whole or in part without sufficient review and discussion by staff, students, community members, law enforcement officials, and legal counsel.

Model Statement of Policy

It shall be the policy of the _____ School District that a reasonably cooperative effort be maintained between the school administration and law enforcement agencies. Law enforcement officials may be summoned in order to conduct an investigation of alleged criminal conduct on the school premises or during a school-sponsored activity or to maintain the educational environment. They may also be summoned for the pur-

pose of maintaining or restoring order when the presence of such officers is necessary to prevent injury to persons or property. Administrators have the responsibility and the authority to determine when the assistance of law enforcement officers is necessary within their respective jurisdictions. The School District's administrators shall at all times act in a manner which protects and guarantees the rights of students and parents.

Model Statement of Rules

I. Investigations Conducted in the Educational Environment

A. School Administrators Initiating Investigation

1. Administrative Investigation

Principals shall have the authority and duty to conduct investigations and to question students pertaining to infractions of school rules whether or not the alleged conduct is a violation of criminal law. Such investigations shall be conducted in a manner which does not unduly interfere with school activities.

Comment: Each school district should determine which specific administrators are to be assigned various responsibilities. The term principal, as used here, refers to the person in charge of an attendance center.

2. Law Enforcement Investigation

a. The principal shall determine when the necessity exists that law enforcement officers be contacted to conduct an investigation of alleged criminal behavior which jeopardizes the safety of school personnel or students, endangers school property or which interferes with the operation of the schools.

b. The principal may request that law enforcement officers conduct an investigation and question students who are potential witnesses of such alleged criminal behavior during school hours. A reasonable attempt shall be made to contact the student's parents, guardian or representative prior to questioning by law enforcement officers. Reasonable requests of the parents, guardian or representative shall be observed. Such contacts or attempted contacts with parents, guardian or representative shall be documented by the administrator involved. In the absence of a student's parents, guardian or representative during any questioning of such students, the principal or other designated certificated school staff person shall be present.

Comment: A reasonable effort to contact the student's parents would normally include attempts to contact at home, at work or at places frequented by the parent. Reasonable requests of the parents would include requests to be present or to contact an attorney, if time and circumstances permits.

This provision attempts to give guidance to the staff persons present during the investigation. Their primary function is to attempt to preserve the rights of students and parents without being an advocate.

c. If the investigation has centered on any particular student suspected of such alleged criminal activity, the procedure for taking students into custody by the police set forth in Section II shall be followed to the extent they do not interfere with reasonable law enforcement procedures.

B. Law Enforcement Officials Initiating Investigation

Although cooperation with law enforcement officers will be maintained, it should not normally be necessary for law enforcement officers to initiate and conduct any investigation and questioning on the school premises during school hours pertaining to criminal activities unrelated to the operation of the school. Only in demonstrated emergency situations, when law enforcement officers find it absolutely necessary will they be voluntarily permitted to conduct such an investigation during school hours. They shall be requested to obtain prior approval of the principal or other designated person before beginning such an investigation on school premises. The administrator shall document the circumstances of such investigations as soon as practicable. Alleged criminal behavior related to the school environment brought to the principal's attention by law enforcement officers shall be dealt with under the provisions of Section I. A. 2.

Comment: Much of this provision is of a suggestive nature because law enforcement officials generally should be assumed to be acting within their authority. It would serve no educational or legal purpose for school staff to raise more than a moderate objection of appropriateness of action on the part of law enforcement officers. The appropriateness or legality of their actions may be questioned at a later time. Law enforcement officers should be familiar with school policy. See Section IV.

C. Questioning of Students During Investigation

1. Violations of School Rules

In instances where school rules have allegedly been violated, the principal or designee may contact the suspected rule violator or potential witness to the infraction.

a. The suspect student should be advised orally or in writing of the nature of the alleged offense and of the evidence, if any, against the student. The student shall be informed that anything that the student says could be used against him or her in a disciplinary proceeding.

Comment: The provisions of a "Miranda Type" warning contained in the last sentence are generally assumed to not be required in an educational setting. However, other considerations, such as the desirability of demonstrating the school's humane treatment of students may suggest such treatment. When the investigation is completed and it is determined that disciplinary action may be in order, the due process requirement of allowing the student to present the student's version of the facts is necessary. See school procedures for due process in disciplinary matters.

b. In questioning a potential student witness to an alleged disciplinary infraction, care should be taken by the administrator to ensure that there is a reasonable likelihood that the student was indeed a witness. School officials should not engage in detailed questioning of students at random without reasonable cause in hope of gathering information as to school misconduct. Probable witnesses should be told the nature of the alleged misconduct and the reason to believe that they were a witness. Such students should be given the opportunity to give their consent before answering questions of school officials.

Comment: Circumstances may arise where it would be advisable to have another adult present during questioning of students.

2. Violations of Criminal Law

a. During an investigation of violation of school rules, it may come to the attention of the administrator that the investigated activity may also be a violation of criminal law. In proceeding with the investigation, the principal can attempt to ascertain whether there is sufficient justification to believe that a criminal offense was committed that warrants contacting law enforcement officials.

Comment: Violations of some school rules are also violations of criminal law, and the discretionary judgement of the administrator involved is very important. It is not likely that law enforcement officials would be interested in bringing assault and battery charges against two students involved in a fight; however, sale or possession of drugs would most assuredly be of interest to them.

b. Where a suspected violation of criminal law has occurred on the school grounds involving the operation of the school or during a school-sponsored activity, law enforcement officials may be notified and their presence requested for the questioning of suspected students. Unless circumstances dictate otherwise, questioning of the student shall not begin or con-

tinue until the law enforcement officers arrive. Reasonable attempts shall be made to contact a student's parents, guardian or representative who, unless an emergency exists, shall be given the opportunity to confer with the student and to be present with the student during such questioning. The administrator shall document the contact or attempted contact with the student's parents, guardian or representative. In the absence of parent and student consent, a student should not be questioned by law enforcement officers. The law enforcement officers may wish to advise the student of the student's legal rights. If the parent and the student consent to the questioning, the investigation can continue. If the parent or student refuse consent to the questioning, the law enforcement officers will determine the course of action to be pursued.

Comment: There is no clear legal requirement that school administrators must give "Miranda Type" warnings to students suspected of criminal misconduct when such misconduct is also a violation of school rules. The scanty case law on the subject appears to say that such warnings are not required of school administrators investigating violations of school rules. An opposite result might occur when the administrator is investigating criminal conduct not related to school. Information of criminal conduct not related to the schools should be turned over to law enforcement officials, without additional investigation by school officials. Whether or not the law enforcement officers advise a student of the student's rights is a matter of law and should be left to the officers.

II. Taking a Student into Custody

A. Students may not be released to law enforcement authorities voluntarily by school officials unless the student has been placed under arrest or unless the parent, guardian or representative and the student agree to the release. Administrators shall make reasonable objections to law enforcement authorities who attempt to remove students from school without placing them under arrest or without the acquiescence of the parent, guardian or representative and the student. When students are removed from school for any reason by law enforcement authorities, every reasonable effort will be made to contact the student's parents, guardian or representative immediately. Such effort shall be documented. Whenever a student is removed from school without an arrest being made or without acquiescence of the parent, guardian or representative and the student, the administrator shall immediately contact a superior of the law enforcement officers involved and make objection to the removal of the student. The superintendent's office shall be notified immediately of any removal of a student from school by law enforcement officers under any circumstances.

B. The principal shall make reasonable efforts to pursuade law enforcement officers not to make arrests or take students into custody on school premises. Whenever the need arises to make arrests or take students into custody on school premises, the principal should make reasonable efforts to pursuade the law enforcement officers to utilize a nonuniformed officer in making the arrest.

C. Where it is necessary to take a student into custody on school premises, and time permits, the law enforcement officer shall be requested to contact the school principal and relate the circumstances necessitating such action. When possible, the principal shall have the student summoned to the principal's office where the student may be taken into custody.

D. When an emergency exists, the school principal may summon law enforcement officials to the school to take a student into custody.

E. When a student has been taken into custody or arrested on school premises, without prior notification to the principal, the school staff present shall encourage the law enforcement officers to notify the principal of the circumstances as quickly as possible. In the event that the officers decline to notify the principal, the school staff members present shall immediately notify the principal.

F. If at all possible, parents, guardian or representative of students shall be notified by the principal or other school administrator before the student is taken into custody by law enforcement officials, or as quickly thereafter as can be accomplished. The administrator shall document such notification or attempted notification.

III. Law enforcement officers may be requested to assist in controlling disturbances of the school environment which the principal or other school administrator has found to be unmanageable by school personnel and which has the potential of causing harm to students and other persons or to property. Such potential of possible harm includes members of the general public who have exhibited undesirable or illegal conduct on school premises or at a school event held on school property and who have been requested to leave by an administrator but have refused or failed to do so.

Comment: See Section 729.1, The Code 1977.

IV. School Officials and Local Enforcement Officials Meeting Annually

School administrators shall meet at least annually with local law enforcement officials to discuss the school district's policy and rules regarding law enforcement contacts with the school district. Law enforcement officials will be asked to instruct their staffs as to the terms of the school's policy and rules.

Comment: This provision is essential. While it is important that relations between law enforcement agencies and schools remain good, law enforcement officials must understand that school personnel are not their agents and that the school has a special responsibility to the students and parents in the community. The cooperation of law enforcement officials in controlling the actions of their subordinates is very important.

V. School staff members shall be appraised of the contents of these provisions at least annually.

Final Comment: The committee developing this model will be updating it as the need arises and would appreciate your comments and suggestions. This model does not address the question of police-school liaison officers. We would like other people's opinions on whether this model should include such officers and how the situation should be handled.